

**From:** Daniel R. Collins  
**To:** Microsoft ATR  
**Date:** 1/23/02 10:10am  
**Subject:** Microsoft Settlement

Renata B. Hesse  
Antitrust Division  
U.S. Department of Justice

Dear Madam:

As a professional software developer, I find the proposed settlement in the antitrust case between Microsoft Corporation and the Department of Justice to be disturbing in its insufficiency.

The most telling detail of the settlement is that it, to my reading, will allow Microsoft to continue using its monopoly position freely in opposition to "open source" software developers -- that is, software writers who work in a charitable and nonprofit capacity, leveraging the free-copying capacities of the Internet to benefit anyone who wishes to download and use their programs. On the one hand, "open source" examples such as the Linux operating system have clearly provided U.S. consumers and businesses with a less-expensive, more robust, more efficient system for running personal computers; on the other hand, the proposed antitrust settlement will allow Microsoft to continue holding documentation, protocols, and APIs in secret from "open source" developers, because Microsoft only needs to release them to "viable businesses", as defined by the Microsoft corporation.

The fact that this issue is important to Microsoft is best highlighted by the fact that Microsoft Windows Division Vice-President Brian Valentine has written, "'Linux is the long-term threat against our core business. Never forget that!'" (as reported at <http://www.theregister.co.uk/content/archive/22770.html> ).

However, Microsoft will be able to continue holding operating protocols in secret from the "open source" Linux developers, because, according to the proposed settlement's Section J:

J. No provision of this Final Judgment shall:

...

2. Prevent Microsoft from conditioning any license of any API, Documentation or Communications Protocol related to anti-piracy systems, anti-virus technologies, license enforcement mechanisms, authentication/authorization security, or third party intellectual property protection mechanisms of any Microsoft product to any person or entity on the requirement that the licensee: (a) has no history of software counterfeiting or piracy or willful violation of intellectual property rights, (b) has a reasonable business need for the API, Documentation or Communications Protocol for a planned or

shipping product, (c) meets reasonable, objective standards established by Microsoft for certifying the authenticity and viability of its business, (d) agrees to submit, at its own expense, any computer program using such APIs, Documentation or Communication Protocols to third-party verification, approved by Microsoft, to test for and ensure verification and compliance with Microsoft specifications for use of the API or interface, which specifications shall be related to proper operation and integrity of the systems and mechanisms identified in this paragraph."

I hope that you will recognize the importance of extending the protections in Section J to charitable and "open source" developers, in addition to those serving as for-profit businesses.

Sincerely,

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